

in subsection (a)(6) of the Act will begin to run only after the Agency has received fee payments or assurances.

(h) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of billing.

(i) Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to "ACTION." A receipt for any fees paid will be provided upon written request.

(j) Charges may be assessed for search and review time, even if the Agency fails to locate records responsive to a request of if records located are determined to be exempt from disclosure.

(k) No fee shall be charged if the costs of routine collection and processing of the fee will equal or exceed the amount of the fee.

(l) A requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. (See appendix A—Sample Request Letter.) Upon receipt of such a request, the FOIA Officer shall refer the request to the Deputy Director or to such official as the Deputy Director may designate, who shall promptly determine whether such fee waiver or reduction shall be granted.

(2) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Agency, and is not primarily in the commercial interest of the requester. The Agency shall consider the following factors in determining whether an application for a fee waiver or reduction will be granted:

(i) Does the requested information concern the operations or activities of the Agency?

(ii) If so, will disclosure of the information be likely to contribute to pub-

lic understanding of the Agency's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester? In applying this criterion, the Agency will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and the public interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction will be granted. In those instances where a news media requester, scholar, or public interest group has satisfied the "public interest" standard necessary for waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to that requester and a waiver or reduction of fees will be granted.

(3) When a fee waiver application involving cost has been included in a request for records, the request shall not be deemed to have been received until an Agency determination is made regarding the fee waiver application. Such determination shall be made within five working days from the date any such request is received by the Agency.

(l) The Agency may use the authorities of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

#### § 1215.8 Business Information.

(a) Business information provided to ACTION by a business submitter shall be disclosed pursuant to a request under the Act in accordance with this section.

(b) The Agency shall promptly notify a business submitter in writing of any request for Agency records containing business information. Such written notice shall either specifically describe

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the nature of the business information requested or provide copies of the records, or portions thereof containing the business information.

(c) Through the notice required in paragraph (b) of this section, the Agency shall afford a business submitter a reasonable opportunity to object to disclosure of the information in question, and to provide the Agency with a written statement of grounds for such objection.

Such statement shall specify all grounds for withholding any information under any exemption of the Act and, in cases where it argues information should be withheld under Exemption (b)(4) of the Act, a business submitter shall state specifically why the information is a trade secret or is otherwise protected as proprietary commercial or financial information. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Act.

(d) The Agency shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to release requested business information. Whenever the Agency decides to disclose business information over the objection of a business submitter, the Agency shall forward to the business submitter a written notice of such decision, which shall include:

(1) The name, and title or position, of the person responsible for denying the submitter's objection;

(2) A statement of the reasons for which the business submitter's objection was not sustained;

(3) A description of the business information to be disclosed; and

(4) A specific disclosure date.

Such notice of intent to disclose business information shall be mailed by the Agency not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(e) Whenever a requester brings suit to compel disclosure of business information, the Agency shall promptly notify the business submitter.

(f) The notice to submitter requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

### § 1215.9 Appeal procedures.

Upon receipt of a notice of denial, a requester may, within 15 calendar days from the date of receipt of such notice, appeal such adverse determination to the Deputy Director. Such appeal shall be in writing and shall specify the date upon which the notice of denial was received by the person making such appeal. (See appendix 1 (A & B)—Sample Request and Appeal Letters.) The Deputy Director shall make a determination with respect to any appeal within 20 working days after receipt of such appeal, and shall give written notice of such determination to the person making the appeal. To the extent the Deputy Director's determination on appeal upholds the original denial, the notice of such determination shall inform the person making the appeal of his/her right to seek judicial review of the Agency's denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

### § 1215.10 Records which may be exempt from disclosure.

The following categories are examples of records maintained by ACTION which, under the provision of 5 U.S.C. 552(b), may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 11652, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot